

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**IN RE METHYL TERTIARY BUTYL ETHER
PRODUCTS LIABILITY LITIGATION**

Master File No. 1:00-1898
MDL 1358 (SAS)

This Document Relates To:

The Honorable Shira A. Scheindlin

City of Fresno v. Chevron U.S.A. Inc., et al.
Case No. 04 Civ. 04973 (SAS)

**DEFENDANTS' LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS
SUBMITTED IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT BASED ON THE STATUTE OF LIMITATIONS OR, ALTERNATIVELY,
FOR LACK OF INJURY**

The City of Fresno's Claims and General Knowledge of MTBE Prior to October 22, 2000

1. The City of Fresno ("City") filed this lawsuit on October 22, 2003. (Declaration of Jeremiah J. Anderson in Supp. of Defendants' Motion for Summary Judgment Based on the Statute of Limitations ("Anderson Decl."), filed concurrently herewith, Ex. 15, Fresno's Original Compl., filed Oct. 22, 2003.)

2. The City filed a First Amended Complaint on October 28, 2004. (Fresno First Am. Compl., Oct. 28, 2004 [Docket No. 4 (Case No. 04-CV-4973-SAS)] ("FAC").)

3. The City seeks to recover damages "to remove MTBE and TBA pollution from the public drinking water supplies, to restore the reliability of Fresno's water system and drinking water supply, to abate MTBE and TBA plumes." (FAC ¶ 3.)

4. The City seeks investigation costs as future damages for MTBE impact at former release sites, not wellhead treatment costs. The City designated David Norman as its remediation and damages testifying expert. (Anderson Decl., ¶ 4; *see also* Anderson Decl., Ex. 8, D. Norman Expert Report, at 3, "Summary of Opinions," 4–5, "Remediation Alternatives for MTBE" (Dec. 5, 2011) (stating that site characterization needs to be completed before remedial

alternatives are selected); FAC ¶¶ 69, 91.) The City did not designate a modeling expert. (Anderson Decl., ¶ 4.)

5. In *Orange County Water Dist. v. Unocal Corp.*, the Orange County Water District (“OCWD”) seeks investigation costs as future damages for MTBE impact at all but three of the thirty-four focus sites (i.e., costs to determine if remediation is needed). (Anderson Decl., ¶ 3.) OCWD designated Anthony Brown and Robert Stollar as its remediation and damages testifying experts, and they produced reports and have been deposed. (Anderson Decl., ¶ 3.) OCWD designated Dr. Stephen Wheatcraft as its modeling expert. (*Id.*)

6. The City and its experts have not identified any past or future costs associated with removing MTBE and TBA from the City’s drinking water wells, nor has the City incurred such costs. (Anderson Decl., Ex. 10, Little Dep. 140:5–141:1, Mar. 31, 2011; Anderson Decl., Ex. 11, Buche Dep. 343:25–344:24, 480:2–482:1, Apr. 1, 2011; *see also* Anderson Decl., Ex. 8, D. Norman Expert Report, at 3, “Summary of Opinions,” 4–5, “Remediation Alternatives for MTBE” (Dec. 5, 2011).)

7. The City’s remediation expert, David Norman, stated that he lacked sufficient information to recommend remediation at any of the sites, and therefore cannot state whether future remediation at any of the sites will be reasonable. (Anderson Decl., Ex. 7, Norman Dep. 29:16–30:1, 33:4–34:25, Apr. 18, 2012.) Mr. Norman opined that it will cost between \$23,000 and \$135,000 to conduct an initial round of assessment at each of the Sites simply to determine whether any remediation is even needed at them. (*Id.* at Ex. 33) He also testified that until his initial assessment is performed, it is not possible for him to determine abatement costs or even say for certain that abatement is possible or needed. (*Id.* at 100:6–101:6.) Mr. Norman also acknowledges that he has not done a site-specific fate and transport analysis and cannot offer an opinion regarding whether any specific site has impacted or will impact any specific well. (*Id.* at 61:8–64:2.)

8. The City has not had a detection of MTBE in its drinking water wells since February 2011. (Anderson Decl., ¶ 7; Anderson Decl., Ex. 15, Compilation of City of Fresno

MTBE Well Testing Results.) Its historical detections have been at trace levels, the vast majority below 0.5 ppb. (*Id.*) It has been more than three years since MTBE was detected in any of the City's supply wells at or above 0.5 ppb. (*Id.*) Over the last ten years, the single highest detection of MTBE in any of the City's wells was 1.2 ppb on or around October 23, 2008. (*Id.*)

9. The City has also never reduced pumping for any of its wells due to MTBE or TBA. (Anderson Decl., Ex. 10, Little Dep. 212:6–12, Jan. 18, 2011.)

10. The City alleges that it is responsible for “purveying clean, safe drinking water to approximately 450,000 people in the County of Fresno, California.” (FAC ¶ 1.)

11. The City owns and operates a water system which serves the public, and the “drinking water sources for the Fresno water system include more than two hundred and fifty (250) wells owned and operated by the [City].” (FAC ¶ 4.)

12. By the late 1990s, the City was aware that releases of gasoline containing MTBE from underground storage tanks posed a threat to the City's groundwater at that time. (Anderson Decl., Ex. 10, Little Dep. 50:17–51:13, 219:24–221:10, 439:7–442:14, Jan. 18–19, 2011; Anderson Decl., Ex. 12, McIntyre Dep. 38:15–39:17, 95:7–96:14, Mar. 16, 2011.)

13. On February 6, 1996, the California Department of Health Services issued a Methyl Tertiary Butyl Ether (MTBE) — Alert and Monitoring Advisory. (Anderson Decl., Ex. 15, Memorandum from David P. Spath, Cal. Dep't of Health Servs., Methyl Tertiary Butyl Ether (MTBE) — Alert and Monitoring Advisory (Feb. 6, 1996).) The advisory warned that “MTBE is highly soluble in water” and that “MTBE has been found in shallow groundwater throughout the U.S. . . . and [s]ome regional water quality control boards have found MTBE in shallow groundwater in California.” (*Id.* at 1.) Further, the department stated that they are seeking to adopt emergency regulations in 1996 which will require public water systems to monitor for MTBE and “alerting you now to enable systems conducting VOC monitoring during 1996 to include MTBE in the analysis.” (*Id.*)

14. On April 15, 1997, the California Department of Health Services sent Mr. McIntyre, in his capacity as the City's Water Systems Manager, an advisory letter which

informed the City that “the potential for soil and groundwater contamination by MTBE has increased,” the problem “appears to be more wide-spread than previously thought,” “MTBE moves faster through soil than other products in gasoline,” and “[w]ells close to any gasoline station are also considered vulnerable even if the storage tanks at the station have not been identified as failing.” (Anderson Decl., Ex. 14, Letter from Carl L. Carlucci, Cal. Dep’t of Health Servs., to Martin McIntyre, Water Sys. Manager, City of Fresno (Apr. 15, 1997) (FRESNO-MTBE-006075–6076).)

15. The City began testing for MTBE by 1997. (Anderson Decl., Ex. 14, Water Div., City of Fresno Dep’t of Pub. Utils., Water Quality Annual Report 1997, at 5, FRESNO-MTBE-006107 (1997) (FRESNO-MTBE-006103–6108); Anderson Decl., Ex. 14, Letter from Carl L. Carlucci, Cal. Dep’t of Health Servs., to Martin McIntyre, Water Sys. Manager, City of Fresno (Apr. 15, 1997) (FRESNO-MTBE-006075–6076); *see, e.g.*, Anderson Decl., Ex. 14, City of Fresno, Water Quality Analysis Report 1, FRESNO-MTBE-006526 (July 6, 1998) (FRESNO-MTBE-006526–6548).)

16. As early as 1998, Mr. McIntyre, in his capacity as Water System Manager, began participating in the Association of California Water Agencies’ MTBE Work Group. (Anderson Decl., Ex. 13, Memorandum from Krista Clark, Ass’n of Cal. Water Agencies, to MTBE Work Group, at FRESNO-MTBE-007866 (May 12, 1998) (FRESNO-MTBE-007866–7869); Anderson Decl., Ex. 12, McIntyre Dep. 78:9–20 & Ex. 2, Curriculum Vitae of Martin McIntyre.)

17. The City participated in the June 3–4, 1998 Southwest Groundwater Conference held in Anaheim, California, which included extensive information regarding the potential threat of MTBE to groundwater. (Anderson Decl., Ex. 13, Pl.’s Resp. to Interrog. No. 78 from Chevron Defs.’ Second Set of Interrogs.; Anderson Decl., Ex. 13, Nat’l Ground Water Ass’n, The Southwest Focused Ground Water Conference: Discussing the Issue of MTBE and Perchlorate in Ground Water i-iv, FRESNO-MTBE-009308–9311 (June 3–4, 1998) (FRESNO-MTBE-009307–9422).)

18. On June 11, 1998, the Lawrence Livermore National Laboratory submitted a report to the California State Water Resources Control Board entitled “An Evaluation of MTBE Impacts to California Groundwater Resources,” a copy of which was produced from the City’s files and which contains information regarding the alleged threat that MTBE posed to groundwater resources in the State of California. (Anderson Decl., Ex. 13, Anne M. Happel et al., Lawrence Livermore Nat’l Lab., An Evaluation of MTBE Impacts to California Groundwater Resources iv–v, FRESNO-MTBE-011410–11411 (June 11, 1998) (FRESNO-MTBE-011404–11477).)

19. In 1998, a California statute required the California Regional Water Quality Control Board (“Regional Board” or “RWQCB”) to supply MTBE UST listings to “all public water systems operators,” including the City. (CAL. WATER CODE § 13272.1.(1998).)

20. By no later than October 1998, the Regional Board began sending quarterly reports to water providers across the state, including the City, identifying the LUST sites in their jurisdiction where MTBE has been released into the environment, and whether the release site was classified as “GW” (groundwater) or “SOIL” (soil only) site. (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 3–4, FRESNO-MTBE-007875 (Oct. 16, 1998) (FRESNO-MTBE-007872–7885); *see* CAL. WATER CODE § 13272.1.)

21. The Regional Board sent the City several quarterly reports before October 22, 2000 that specifically identified several of the Sites at issue in this Motion (*e.g.*, 1160 Fresno, 3996 N. Parkway, 1605 N. Cedar, and 3645 E. Olive), and indicated that the MTBE released at these sites had impacted groundwater at levels above five parts per billion (ppb). (*See, e.g.*, Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 3–4, FRESNO-MTBE-07717 (Apr. 15, 1999) (FRESNO-MTBE-007714–7728); Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 3–4, FRESNO-MTBE-07669 (Oct. 15, 1999) (FRESNO-MTBE-007666–7680);

Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 5–6, FRESNO-MTBE-008187 (July 14, 2000) (FRESNO-MTBE-008183–8204).)

22. Six of the Sites at issue in this Motion had monitoring wells before October 2000 (1160 Fresno Street, 4142 East Church, 3996 N. Parkway Drive, 1605 N. Cedar Avenue, 3645 E. Olive Avenue, and 1418 E. Shaw). (*See* Anderson Decl., Ex. 1, Letter from RWQCB, to R. J. Cochran, Chevron Prods. Co. 2, FCDEH-FRESNO-044291 (Oct. 12, 1999) (FCDEH-FRESNO-044290–44295) (Chevron #9-4374, 1160 Fresno Street); Anderson Decl., Ex. 1, RM Assocs., Quarterly Ground Water Monitoring Report, 4142 East Church Street tbl. 3, FCDEH-FRESNO-054845 (June 13, 1997) (FCDEH-FRESNO-054837–54854) (Gilbert’s Exxon, 4142 East Church); Anderson Decl., Ex. 2, Deanna L. Harding & Stephen J. Carter, Gettler-Ryan, Inc., First Quarter Groundwater Monitoring & Sampling Report tbl. 1, RWQCB-FRESNO-018344 (Feb. 17, 1997) (RWQCB-FRESNO-018342–18357) (Chevron #9-9093, 3996 N. Parkway Drive); Anderson, Decl., Ex. 2, Letter from Dane A. Mathis, Assoc. Eng’g Geologist, RWQCB, to Edward C. Ralston, Tosco Marketing Co. 2, RWQCB-FRESNO-011099 (Sept. 12, 2000) (RWQCB-FRESNO-011098–11100) (Tosco #39118, 1605 N. Cedar Avenue); Anderson Decl., Ex. 3, Memorandum from Ray Bruun, Assoc. Eng’r, RWQCB, to John Noonan, Senior Eng’r, RWQCB tbl. 1A, RWQCB-FRESNO-021557 (Aug. 5, 1998) (RWQCB-FRESNO-021554–21557) (7-Eleven #13917, 3645 E. Olive Avenue); Anderson Decl., Ex. 4, Kleinfelder, Inc., Ground Water Sampling and Analyses, Unocal Station #6353, at 1, FCDEH-FRESNO-025936 (Sept. 4, 1990) (FCDEH-FRESNO-025932–25969) (Unocal #6353, 1418 E. Shaw).)

23. Prior to October 2000, public agencies were required to provide access to public records, which is defined as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (CAL. GOV’T CODE § 6252, subd. (a), (f), § 6253.)

Remediation reports and correspondence are types of documents that would fall squarely within the definition of public records. (*See* Anderson Decl., Ex. 11, Whiting Dep. 30:14–31:7, 42:10–

43:6, Apr. 25, 2011); *see, e.g.*, Anderson Decl., Ex. 14, Randell Mathias, JOT Dev., Request for Public Information (May 14, 2000) (FCDEH-FRESNO-002530) (requesting documents relating to Unocal site at 1605 N. Cedar Avenue); Anderson Decl., Ex. 14, Peter Volkov, All Star Petroleum, Request for Public Information (Oct. 2, 1999) (RWQCB-FRESNO-001753) (requesting documents relating to Valley Gas site at 2139 S. Elm); Anderson Decl., Ex. 14, John Whiting, RWQCB, Request for Public Information (Jan. 4, 2001) (RWQCB-FRESNO-008048–8049).)

24. The County of Fresno’s document retention policies required it to keep and permanently maintain inspection reports, copies of correspondence, laboratory test results, and “any other pertinent documents or information” that relate to or concern underground tanks and hazardous waste sites. (Anderson Decl., Ex. 12, S. Rhodes Dep. 24:4–25:16 & Ex. 3, Fresno County Dep’t of Health, Environmental Health System Policy and Procedure — Requirements for Documents and Files 1–3 (Jan. 1, 1992, revised Mar. 25, 1993).)

25. On March 25, 1999, California Governor Gray Davis issued an executive order phasing out MTBE in gasoline in California no later than December 31, 2002, based on the findings and recommendations of the University of California report on the “Health and Environmental Assessment of Methyl Tertiary-Butyl Ether (MTBE),” public testimony, and regulatory agencies stating that, “while MTBE has provided California with clean air benefits, because of leaking underground fuel storage tanks MTBE poses an environmental threat to groundwater and drinking water.” (Anderson Decl., Ex. 15, Exec. Order No. D-5-99 (Mar. 25, 1999), <http://gov.ca.gov/news.php?id=9085> (last visited Feb. 1, 2013).)

26. On January 7, 1999, the California Department of Health Services set a secondary MCL for MTBE at 5.0 ppb to protect the water’s aesthetics. (CAL. CODE REGS. tit. 22, § 64449 (1999).)

27. On September 24, 1999 the State of California adopted a new regulation requiring all gasoline stations that sold gasoline containing MTBE to put a notice on their pumps that

stated, “[t]he State of California has determined that the use of this chemical presents a significant risk to the environment.” (CAL. CODE REGS. tit. 13, § 2273 (1999).)

28. Since at least 1994, the City has regulated the installation, use, and destruction of all groundwater monitoring wells, including those at gasoline station UST sites, within the City of Fresno by a permit process. (Anderson Decl., Ex. 14, Eng’g Servs. Div., City of Fresno Pub. Works Dep’t, Standard Procedures for Monitoring Well Permit Process §§ 5, 8–9 (July 1, 1994, revised July 1, 2003).)

29. The City’s well permitting process required that “[i]f the analytical results indicate no evidence of any environmental impact at the location of the well, the well shall be destroyed to ensure the quality of ground water is protected.” (*Id.* § 9) It also required the City to assess the “analytical results” at each Site that had at least one groundwater monitoring well and to make a determination regarding “any environmental impact at the location of the well.” (*Id.*)

30. All records identified above or below with the prefixes FCDEH-FRESNO, RWQCB-FRESNO, and FRESNO-MTBE, were produced by the Fresno County Department of Environmental Health, the Regional Board, or the City, respectively. (Anderson Decl., ¶ 5.) Both the Fresno County Department of Environmental Health and the Regional Board produced many of the documents pursuant to requests under the California Public Records Act.¹ (Anderson Decl., ¶ 5.)

¹ The Court has already held that “various ‘site files’ maintained by the RWQCB, other regional water authorities, and the Orange County Health Care Agency . . . are admissible as ‘public records’ under Rule 803(8)(c) of the Federal Rules of Evidence as they are the result of the agencies’ factual investigation of matters within their statutory authority.” *In re MTBE Prods. Liab. Litig.*, 475 F. Supp. 2d 286, 294 n.45 (S.D.N.Y. 2006).

STATIONS WITH MTBE DETECTIONS IN GROUNDWATER BEFORE OCTOBER 22, 2000

Chevron #9-4374, 1160 Fresno Street

31. On September 3, 1996, the site consultant for Chevron #9-4374 (1160 Fresno Street) reported to the RWQCB that MTBE had been detected in soil at the site at a maximum concentration of 720 parts per million (ppm) (or 720,000 ppb). (Anderson Decl., Ex. 1, Letter from Steven J. Brussee et al., Geraghty & Miller, Inc., to Russell W. Walls, RWQCB 2, RWQCB-FRESNO-042545, tbl. 1, RWQCB-FRESNO-042547 (Sept. 3, 1996) (RWQCB-FRESNO-042544–42578).)

32. On August 6, 1996, the site consultant reported to the Fresno County Department of Environmental Health that, on July 2, 1996, MTBE was detected in groundwater at the site at a maximum concentration of 93 ppb. (Anderson Decl., Ex. 1, Letter from Deanna L. Harding & Penny L. Silzer, Gettler-Ryan, Inc., to Robert Cochran, Chevron USA Prods. Co., tbl. 1, FCDEH-FRESNO-041731 (Aug. 6, 1996) (FCDEH-FRESNO-041724–41763); Anderson Decl., Ex. 8, D. Norman Expert Report, at 7, Ex. 5, Investigation & Remediation Summary Report Former Chevron #9-4374, at 6 (stating that the first MTBE detection in groundwater at this site was in July 1996); *id* at 8, Ex. 5, at 13 (relying on the August 6, 1996 letter from Gettler-Ryan, Inc.).)

33. By April 15, 1998, the State included the subject site on its list of hazardous waste and substances sites provided to the City. (Anderson Decl., Ex. 14, State of California, Hazardous Waste and Substances Sites List, at FRESNO-MTBE-008129 (Apr. 1998) (FRESNO-MTBE-008126–8134).)

34. Between July 1996 and October 1998, MTBE was detected in one or more groundwater samples, with the maximum detection at 2,900 ug/L (ppb). (Anderson Decl., Ex. 1, Letter from RWQCB, to R. J. Cochran, Chevron Prods. Co. 2, FCDEH-FRESNO-044291 (Oct. 12, 1999) (FCDEH-FRESNO-044290–44295).)

35. On April 15, 1999, the RWQCB sent water purveyors, including the City, a list of sites impacted by MTBE in Fresno County, which indicated that MTBE had been detected at Chevron #9-4374 at levels between 1,000 ppb and 5,000 ppb and noted impacts to “GW.” (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 3, FRESNO-MTBE-07717 (Apr. 15, 1999) (FRESNO-MTBE-007714–7728).)

36. On October 15, 1999, the RWQCB sent water purveyors, including the City, a list of sites impacted by MTBE in Fresno County, which indicated that MTBE had been detected at the subject site at levels between 1,000 ppb and 5,000 ppb and noted impacts to “GW.” (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 3, FRESNO-MTBE-007669 (Oct. 15, 1999) (FRESNO-MTBE-007666–7680).)

37. On December 1, 1999, the RWQCB sent a letter to the environmental consultant for the subject site regarding case closure for the site, stating that “[MTBE] may be present at concentrations exceeding 1000 ug/L.” (Anderson Decl., Ex. 5, Letter from Bruce E. Myers, Assoc. Eng’g Geologist, RWQCB, to Frank Volanti 2, FCDEH-FRESNO-044288 (Dec. 1, 1999) (FCDEH-FRESNO-044287–44289).) The City’s Development Department and City councilmen for the Second and Third Districts are listed as recipients of the December 1, 1999 letter authored by the RWQCB. (*Id.* at 3, FCDEH-FRESNO-044289.)

38. On January 14, 2000, the RWQCB sent water purveyors, including the City, a list of sites impacted by MTBE in Fresno County, which indicated that MTBE had been detected at the subject site at levels between 1,000 ppb and 5,000 ppb and noted impacts to “GW.” (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 5, FRESNO-MTBE-008143 (Jan. 14, 2000) (FRESNO-MTBE-008139–8158).)

39. On April 14, 2000, the RWQCB sent water purveyors, including the City, a list of sites impacted by MTBE in Fresno County, which indicated that MTBE had been detected at the

subject site at levels between 1,000 ppb and 5,000 ppb and noted impacts to “GW.” (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 6, FRESNO-MTBE-008163 (Apr. 14, 2000) (FRESNO-MTBE-008159–8182).)

40. On July 14, 2000, the RWQCB sent water purveyors, including the City, a list of sites impacted by MTBE in Fresno County, which indicated that MTBE had been detected at the subject site at levels between 1,000 ppb and 5,000 ppb and noted impacts to “GW.” (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Project Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 5, FRESNO-MTBE-008187 (July 14, 2000) (FRESNO-MTBE-008183–8204).)

41. On July 27, 2012, the RWQCB sent a case closure letter stating no further action was required at this site. (Anderson Decl., Ex. 15, Pamela Creedon, Executive Officer, RWQCB, Executive Officer’s Report 3 (Oct. 4–5, 2012), available at http://www.swrcb.ca.gov/rwqcb5/board_info/exec_officer_reports/1210eo.pdf (last visited Jan. 31, 2013).)

Gilbert’s Exxon, 4142 East Church

42. MTBE was first detected in groundwater at Gilbert’s Exxon (4142 East Church) on April 16, 1997 with an MTBE level of 0.72 ppb. (Anderson Decl., Ex. 1, RM Assocs., Quarterly Ground Water Monitoring Report, 4142 East Church Street tbl. 3, FCDEH-FRESNO-054845 (June 13, 1997) (FCDEH-FRESNO-054837–54854).) The first time MTBE was detected over five ppb in a monitoring well at the site was on July 12, 2000, at levels of ten and fifteen ppb. (Anderson Decl., Ex. 1, Grisanti & Assocs., Inc., Soil & Groundwater Contamination Investigation and Corrective Action Plan, Gilbert’s Exxon, tbl. 4, at 14, RWQCB-FRESNO-043879 (RWQCB-FRESNO-043861–43967); Anderson Decl., Ex. 8, D. Norman Expert Report, at 9–10, Ex. 15, Investigation & Remediation Summary Report Gilbert’s Exxon, at 5 & app. C (referring to historical groundwater monitoring results at the site showing the first MTBE detection in groundwater on July 12, 2000).)

43. On May 1, 2009, the RWQCB issued a case closure letter stating that the site investigation and corrective action for the underground storage tanks at this site have been completed and that “no further action related to the petroleum release(s) at the site is required.” (Anderson Decl., Ex. 5, Letter from Pamela C. Creedon, Executive Officer, RWQCB, to Gilbert Romero (May 1, 2009) (RWQCB-FRESNO-043537).)

Chevron #9-9093, 3996 N. Parkway Drive

44. On January 28, 1997, the site environmental consultant for Chevron #9-9093 (3996 N. Parkway Drive) reported to the RWQCB and Fresno County Department of Environmental Health that MTBE had been detected in soil at 2,800 ppm (2,800,000 ppb) in a sample taken from the subject site in September 1995. (Anderson Decl., Ex. 2, Pacific Env'tl. Group, Inc., Installation of Groundwater Monitoring Wells and Soil Boring 2, RWQCB-FRESNO-018395 (Jan. 28, 1997) (RWQCB-FRESNO-018394–18444); *id.* at 5, RWQCB-FRESNO-018398 (copying Russell Walls of the RWQCB and Jim R. Armstrong of the Fresno County Community Health Department).)

45. On February 17, 1997, the site environmental consultant reported to the RWQCB that MTBE was detected at 64 ppb in a groundwater sample taken from the subject site on January 13, 1997. (Anderson Decl., Ex. 2, Deanna L. Harding & Stephen J. Carter, Gettler-Ryan, Inc., First Quarter Groundwater Monitoring & Sampling Report, tbl. 1, RWQCB-FRESNO-018344 (Feb. 17, 1997) (RWQCB-FRESNO-018342–18357); Anderson Decl., Ex. 8, D. Norman Expert Report, at 11–13, Ex. 20, Investigation & Remediation Summary Report Chevron #9-9093, at 6, 9 & app. C (referring to historical groundwater monitoring data at the site, and referencing Table 1 of the February 17, 1997 Gettler-Ryan, Inc. letter showing that the first MTBE detection in groundwater was January 13, 1997).) The RWQCB confirmed this detection on June 19, 1997. (Anderson Decl., Ex. 2, Letter from John M. Noonan, Senior Eng'r, RWQCB, to Robert Cochran, Chevron Prods. Co. 1, RWQCB-FRESNO-043452 (June 19, 1997) (RWQCB-FRESNO-043452–43454).)

46. By April 15, 1998, the State included the subject site on its list of hazardous waste and substances sites that provided to the City. (Anderson Decl., Ex. 14, State of California, Hazardous Waste and Substances Site List (Apr. 1998) (FRESNO-MTBE-008126–8134).)

47. On April 15, 1999, the RWQCB sent water purveyors, including the City, a list of sites impacted by MTBE in Fresno County, which indicated that MTBE had been detected at the subject site at levels between 50 ppb and 200 ppb. (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 4, FRESNO-MTBE-007717 (Apr. 15, 1999) (FRESNO-MTBE-007714–7728).)

48. On January 14, 2000, the RWQCB sent water purveyors, including the City, a list of sites impacted by MTBE in Fresno County, which indicated that MTBE had been detected at the subject site at levels “> 100k” ppb and noted impacts to “GW.” (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 6, FRESNO-MTBE-008143 (Jan. 14, 2000) (FRESNO-MTBE-008139–8158).)

49. On July 14, 2000, the RWQCB sent water purveyors, including the City, a list of sites impacted by MTBE in Fresno County, which indicated that MTBE had been detected at the subject site at levels “> 100k” ppb and noted impacts to “GW.” (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 6, FRESNO-MTBE-008187 (July 14, 2000) (FRESNO-MTBE-008183–8204).)

50. On May 14, 2002, the RWQCB issued a case closure letter stating that the site investigation and remedial action for the underground storage tank site at Chevron #9-9093 was complete and that “no further action related to the petroleum release at the site is required.” (Anderson Decl., Ex. 5, Letter from Bert E. Van Voris, Supervising Eng’r, RWQCB, to Robert J. Cochran, Chevron USA Prods. Co. (May 14, 2002) (RWQCB-FRESNO-030714).)

Tosco #39118, 1605 N. Cedar Avenue

51. MTBE was first detected in a grab groundwater sample at Tosco #39118 (1605 N. Cedar Avenue) in January 1999 at 20,000 ppb. (Anderson Decl., Ex. 2, Gettler-Ryan. Inc., Work Plan for a Subsurface Investigation at Former Tosco (Unocal) Service Station No. 3711, at 2, FRESNO-MTBE267385 (June 26, 2000) (FRESNO-MTBE267382-267400); Anderson Decl., Ex. 2, Letter from David A. Sholes, Assoc. Eng'g Geologist, RWQCB, to Edward Ralston, Tosco Marketing Co. 2, FRESNO-MTBE267380 (July 3, 2000) (FRESNO-MTBE267379-267381).)

52. MTBE was first detected in a monitoring well on August 8, 2000, with MTBE detections of 1,460 ug/L (or 1,460 ppb) and 1,580 ug/L (or 1,580 ppb). (Anderson, Decl., Ex. 2, Letter from Dane A. Mathis, Assoc. Eng'g Geologist, RWQCB, to Edward C. Ralston, Tosco Marketing Co. 2, RWQCB-FRESNO-011099 (Sept. 12, 2000) (RWQCB-FRESNO-011098-11100); Anderson Decl., Ex. 8, D. Norman Expert Report, at 14, Ex. 22, Investigation & Remediation Summary Report TOSCO #39118, at 6 (stating that there was an MTBE detection in groundwater at this site in August 2000).)

53. On July 14, 2000, the RWQCB sent water purveyors, including the City, a list of MTBE dischargers, which included this site. The list identifies the type of impact at this site as groundwater with an MTBE range of ">20k - <100k." (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 5, FRESNO-MTBE-008187 (July 14, 2000) (FRESNO-MTBE-008183-8204).)

54. On April 12, 2011, the RWQCB issued a case closure letter for this site stating that the site investigation and corrective action for the underground storage tanks was complete, and that "no further action related to the petroleum release(s) at the site is required." (Anderson Decl., Ex. 5, Letter from Pamela C. Creedon, Executive Officer, RWQCB, to Ted Moise, ConocoPhillips (Apr. 12, 2011) (RWQCB2-FRESNO-000308).)

7-Eleven #13917, 3645 E. Olive Avenue

55. An MTBE detection in groundwater, of 13 ug/L (13 ppb), was first reported in a monitoring well at 7-Eleven #13917 (3645 E. Olive Avenue) in sampling conducted on May 14, 1996.² (Anderson Decl., Ex. 3, Memorandum from Ray Bruun, Assoc. Eng'r, RWQCB, to John Noonan, Senior Eng'r, RWQCB, tbl. 1A, RWQCB-FRESNO-021557 (Aug. 5, 1998) (RWQCB-FRESNO-021554–21557).)

56. An MTBE detection in groundwater, of 15 ug/L (15 ppb), was reported in the same monitoring well in sampling conducted on April 22, 1997. (*Id.*)

57. In 1997, the City issued a building permit for construction of a remediation system at the subject site. (Anderson Decl., Ex. 3, Letter from John Whitler & Jaff Auchterlonie, Fluor Daniel GTI, Inc., to Ray Bruun, RWQCB (June 27, 1997) (RWQCB-FRESNO-021558).)

58. In April 1998, the California Department of Toxic Substances Control included the site on its list of hazardous waste and substances sites provided to the City. (Anderson Decl., Ex. 14, State of California, Hazardous Waste and Substances Sites List, at FRESNO-MTBE-008131 (Apr. 1998) (FRESNO-MTBE-008126–8134).)

59. On August 5, 1998, the RWQCB issued a case closure letter for the site stating that the site investigation and remedial action were complete, and that “no further action related to the underground tank release is required.” (Anderson Decl., Ex. 5, Letter from Bert E. Van Voris, Supervising Eng'r, RWQCB, to Bob DeNinno, The Southland Corp. (Aug. 5, 1998) (RWQCB-FRESNO-021553).)

60. On April 15, 1999, the RWQCB sent water purveyors, including the City, a list of sites reporting MTBE impact in Fresno County, which indicated that MTBE had been reported at 7-Eleven #13917 at levels between 5 ppb and 15 ppb, and noted impacts to “GW.” (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks,

² Should the claims on this station proceed to the merits, CITGO reserves the right to dispute the validity of the MTBE detections at this site, but for purposes of the present motion, they are assumed to be true.

RWQCB, to Water Purveyors, Cent. Valley Region 3, FRESNO-MTBE-007717 (Apr. 15, 1999) (FRESNO-MTBE-007714–7728).)

61. On October 15, 1999, the RWQCB sent water purveyors, including the City, a list of sites reporting MTBE impact in Fresno County, which indicated that MTBE had been reported at 7-Eleven #13917 at levels between 5 ppb and 15 ppb, and noted impacts to “GW.” (Anderson Decl., Ex. 6, Memorandum from Gordon L. Boggs, Program Manager, Underground Tanks, RWQCB, to Water Purveyors, Cent. Valley Region 3, at FRESNO-MTBE-007669 (FRESNO-MTBE-007666-7680).)

**STATIONS WITH NO MTBE DETECTIONS IN GROUNDWATER (AT ANY TIME)
AND MTBE DETECTIONS IN SOIL BEFORE OCTOBER 22, 2000**

Tosco #30587, 1610 N. Palm Avenue

62. There have been no MTBE detections in groundwater or at any monitoring wells at the Tosco #30587 (1610 N. Palm Avenue) site. (Anderson Decl., Ex. 8, D. Norman Expert Report, at 6, tbl. 1 (Dec. 5, 2011).)

63. MTBE was first detected in soil at this site on September 20, 1997. (Anderson Decl., Ex. 3, Pacific Env'tl. Group, Inc., Soil Gas Survey Results, Unocal Service Station 3922, at FCDEH-FRESNO-029846 (Oct. 29, 1997) (FCDEH-FRESNO-029840–29847); Anderson Decl., Ex. 9, D. Norman Expert Report, at 1, Ex. 2, Investigation & Remediation Summary Report Tosco Service Station #30587, at 4 (stating that the MTBE was detected in a soil gas sample at the site in September 1997); *id.* at 3, Ex. 2, at 8 (relying on the October 29, 1997 Soil Gas Survey Results.) The maximum MTBE level for the soil gas samples taken at the time was 2,500 ug/L (2,500 ppb). (Anderson Decl., Ex. 3, Pacific Env'tl. Group, Inc., Soil Gas Survey Results, Unocal Service Station 3922, at FCDEH-FRESNO-029846.)

64. MTBE was also detected in soil at this site on May 28, 1998 with a maximum detection of 780 ppm (780,000 ppb). (Anderson Decl., Ex. 3, Glenn L. Matteucci, Asst. Project Manager, Env'tl. Resolutions, Inc., Underground Storage Tank and Associated Piping and Dispenser Removal at Tosco 76 Service Station 3922, tbl. 1, FCDEH-FRESNO-030038 (Oct. 13,

1998) (FCDEH-FRESNO-030032–30114); Anderson Decl., Ex. 9, D. Norman Expert Report, at 1, Ex. 2, Investigation & Remediation Summary Report Tosco #30587, at 4 (stating that the MTBE was detected in a soil gas sample at the site in September 1997); *id* at 3, Ex. 2, at 8 (relying on the October 13, 1998 Underground Storage Tank and Associated Piping and Dispenser removal Report.)

65. On November 4, 1998, the County of Fresno Community Health Department issued a letter confirming the permanent closure of underground storage tanks at this site, and stated that “no further action is required at this time.” (Anderson Decl., Ex. 5, Letter from Lisa Smoot, Env’tl. Health Analyst, County of Fresno Cmty. Health Dep’t (Nov. 4, 1998) (FCDEH-FRESNO-030027).)

66. David Norman, the Plaintiff’s modeling expert, stated that “[i]t is [his] based on the lack of groundwater assessment at [Tosco #30587] and the detections of TPHg and MTBE in site soils, that significant data gaps exists concerning the potential for a groundwater impact and a migrating MTBE plume. . . . Therefore, it is recommended that four monitoring wells be installed to evaluate the depth to groundwater[.]”. (Anderson Decl., Ex. 9, D. Norman Expert Report, at 2, Ex. 2, at 7.)

Valley Gas, 2139 South Elm Street

67. There have been no MTBE detections in groundwater or at any monitoring wells at the Valley Gas service station (2139 South Elm Street). (Anderson Decl., Ex. 8, D. Norman Expert Report, at 6, tbl. 1 (Dec. 5, 2011).)

68. MTBE was first detected in soil at this site on November 5, 1999. (Anderson Decl., Ex. 3, ASR Eng’g, Inc., Soil Sampling and Chemical Analyses Report, Gasoline Piping Leak, Valley Gas 3, RWQCB-FRESNO-001260 (Nov. 29, 1999) (RWQCB-FRESNO-001258–1264); *see also* Anderson Decl., Ex. 3, Letter from John D. Whiting, Eng’g Geologist, RWQCB, to Mohammad Shahid, Petro Group II, at 1, RWQCB-FRESNO-001318 (Feb. 27, 2008) (RWQCB-FRESNO-001318–1320); Anderson Decl., Ex. 9, D. Norman Expert Report, at 4, Ex.

4, Investigation & Remediation Summary Report Former Valley Gas, at 5 (stating that MTBE was detected in a soil sample at the site in November 1999); *id* at 5, Ex. 4, at 7 (relying on the November 29, 1999 Soil Sampling and Chemical Analyses Report).) The MTBE level for the soil sample taken was 920 mg/kg (or 920,000 ppb).³ (Anderson Decl., Ex. 3, ASR Eng'g, Inc., Soil Sampling and Chemical Analyses Report, at 3, RWQCB-FRESNO-001260; *see also* Anderson Decl., Ex. 3, Letter from John D. Whiting, Eng'g Geologist, RWQCB, to Mohammad Shahid, Petro Group II, at 1, RWQCB-FRESNO-001318.)

Beacon-Arco #615, 1625 Chestnut Avenue

69. There have been no MTBE detections in groundwater or at any monitoring wells at the Beacon-Arco #615 site (1625 Chestnut Avenue). (Anderson Decl., Ex. 8, D. Norman Expert Report, at 6, tbl. 1 (Dec. 5, 2011).)

70. On June 11, 1998, the site consultant for this site reported to the RWQCB that it had detected MTBE in soil samples taken from the site at levels ranging from .011 mg/kg to 81 mg/kg (or 81,000 ppb). (Anderson Decl., Ex. 3, El Dorado Env'tl., Inc., Tank Closure Report Beacon Station #615, at 3, RWQCB-FRESNO-016188, tbl. 1, RWQCB-FRESNO-016196 (Sept. 27, 1998) (RWQCB-FRESNO-016182–16229); Anderson Decl., Ex. 9, D. Norman Expert Report, at 6, Ex. 25, Investigation & Remediation Summary Report Beacon-Arco Service Station #615, at 4 (stating that MTBE was detected in soil samples at the site in June 1998); *id* at 7, Ex. 25, at 7 (relying on the September 27, 1998 Tank Closure Report).)

71. On September 25, 2003, the RWQCB issued a case closure letter for this site stating that the site investigation and corrective action for the underground storage tanks was complete, and that “no further action related to the petroleum release(s) at the site is required.” (Anderson Decl., Ex. 5, Letter from Bert E. Van Voris, Supervising Eng'r, RWQCB, to Joseph Aldridge, Ultramar, Inc. (Sept. 25, 2003) (RWQCB-FRESNO-015737).)

³ Certain measurements of chemical concentrations in soil are not directly convertible to concentrations in water due to the different medium.

STATIONS WITH NO GROUNDWATER OR SOIL DETECTIONS

Unocal #6353, 1418 E. Shaw

72. MTBE has never been detected in soil, groundwater, or any monitoring wells at Unocal #6353 (1418 E. Shaw). (Anderson Decl., Ex. 8, D. Norman Expert Report, at 6, tbl. 1 (Dec. 5, 2011).)

73. In September 1987, a soil and groundwater investigation was conducted in connection with the removal of a waste oil tank. (Anderson Decl., Ex. 4, Kleinfelder, Inc., Soil and Ground Water Investigation Phase II Report, Unocal Station #6353, at 1, FCDEH-FRESNO-025973 (Jan. 30, 1989) (FCDEH-FRESNO-025970–26096).) Detections of total petroleum hydrocarbon constituents were reported in connection with samples taken from two monitoring wells at the subject site. (*Id.* at 11 & tbl. 4.3, FCDEH-FRESNO-025983.)

74. In May 1990, four groundwater monitoring wells were sampled at the subject site and were all non-detect for all constituents tested. (Anderson Decl., Ex. 4, Kleinfelder, Inc., Ground Water Sampling and Analyses, Unocal Station #6353, at 1, FCDEH-FRESNO-025936 (Sept. 4, 1990) (FCDEH-FRESNO-025932–25969).)

75. On June 21, 1994, an unauthorized release was reported at the subject site in connection with the removal of gasoline and waste oil USTs. (Anderson Decl., Ex. 4, Lynda S. Chalom, Unocal Corp., Underground Storage Tank Unauthorized Release (Leak) / Contamination Site Report (June 21, 1994) (RWQCB-FRESNO-039976–39977).)

76. On October 25, 1995, Fresno County granted closure at the site based on a June 19, 1995 Phase II site assessment, which included soil sampling. (Anderson Decl., Ex. 4, Letter from Lynn Klinkby, Geologist, County of Fresno Health Servs. Agency, to Robert A. Boust, Unocal Corporate Envtl. 1–2, RWQCB-FRESNO-039985–039986 (Oct. 25, 1995) (RWQCB-FRESNO-039985–39987).)

77. In 2003, in connection with the removal of a waste oil tank, petroleum hydrocarbon constituents were detected in a soil sample taken from the subject site. (Anderson Decl., Ex. 4, SECOR Int'l Inc., Results of Waste Oil UST Assessment and Request for Low Risk

Closure, 76 Station #6353, at 2, FCDEH-FRESNO-025642 (May 8, 2006) (FCDEH-FRESNO-025637-25750); Anderson Decl., Ex. 4, Katie Carpenter & Chris Skelton, Twining Labs., Inc., Soil Sample Analyses for Underground Storage Tank Removal, Unocal Service Station 3, FCDEH-FRESNO-026346 (Feb. 5, 2003) (FCDEH-FRESNO-026344-26357).) The sample was non-detect for MTBE. (Anderson Decl., Ex. 4, SECOR Int'l Inc., Results of Waste Oil UST Assessment and Request for Low Risk Closure, 76 Station #6353, at tbl. 1, FCDEH-FRESNO-025654; Anderson Decl., Ex. 4, Twining Labs., Inc., Soil Sample Analyses for Underground Storage Tank Removal, Unocal Service Station, at 3, FCDEH-FRESNO-026346.)

78. The County of Fresno Department of Community Health has stated that the site investigation conducted proved that the site was "low risk," and to "expect a letter of 'no further action'." (Anderson Decl., Ex. 5, Jim R. Armstrong, Telephone Call Record, at FCDEH-FRESNO-025763 (June 5, 2006) (FCDEH-FRESNO-025763-25764).)

Dated: February 1, 2013

Respectfully submitted,

KING & SPALDING LLP



Robert E. Meadows
Jeremiah J. Anderson
1100 Louisiana, Suite 4000
Houston, Texas 77002
Tel: (713) 751-3200
Fax: (713) 751-3290

Charles C. Correll Jr.
101 Second Street, Suite 2300
San Francisco, California 94105
Tel: (415) 318-1200
Fax: (415) 318-1300

***Attorneys for Defendants
Chevron U.S.A. Inc. and Union Oil
Company of California***

DEFENDANTS JOINING LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS

CHEVRON U.S.A. INC.

UNION OIL COMPANY OF CALIFORNIA

EXXON MOBIL CORPORATION

SHELL OIL COMPANY

TEXACO REFINING AND MARKETING INC.

EQUILON ENTERPRISES LLC

EQUIVA SERVICES LLC

CITGO PETROLEUM CORPORATION

KERN OIL & REFINING CO.

NELLA OIL COMPANY

CONOCOPHILLIPS COMPANY, individually and as successor-in-interest to Defendant
TOSCO CORPORATION and Phillips Petroleum Company

LYONDELL CHEMICAL COMPANY, formerly known as "ARCO CHEMICAL COMPANY"

COASTAL CHEM, INC.

TESORO CORPORATION (F/K/A TESORO PETROLEUM CORPORATION)

TESORO REFINING and MARKETING COMPANY (ERRONEOUSLY NAMED AS
TESORO REFINING AND MARKETING COMPANY, INC.)

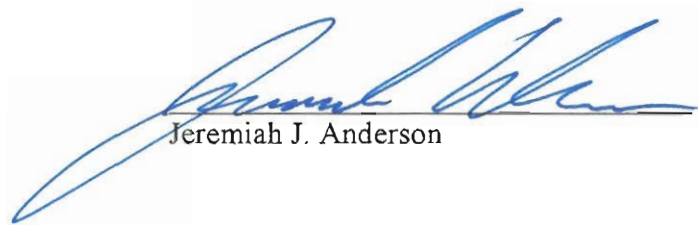
ULTRAMAR INC.

VALERO MARKETING AND SUPPLY COMPANY

VALERO REFINING COMPANY-CALIFORNIA

Certificate of Service

I hereby certify that on the 1st day of February 2013, a true, correct, and exact copy of the foregoing document was served on all counsel via LexisNexis File & Serve.



Jeremiah J. Anderson